

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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*UNITED STATES OF AMERICA *
* CRIMINAL ACTION
* v. * No. 04-10170-GAO
*
* DOMINGA RODRIGUEZ *
* * * * *

BEFORE THE HONORABLE GEORGE A. O'TOOLE, JR.,
UNITED STATES DISTRICT JUDGE
DISPOSITION EXCERPT
October 27, 2005

APPEARANCES:

UNITED STATES ATTORNEY'S OFFICE, (By AUSA
Christopher F. Bator) 1 Courthouse Way, Suite 9000,
Boston, Massachusetts 02210, on behalf of the United
States of America

LAW OFFICES OF BENJAMIN D. ENTINE, (By Benjamin D.
Entine, Esq.) 77 Franklin Street, Boston, Massachusetts
02110, on behalf of Defendant

Courtroom No. 21
1 Courthouse Way
Boston, Massachusetts 02109

James P. Gibbons, RPR, RMR
Official Court Reporter
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E X C E R P T

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THE COURT: All right. I did not know whether Ms. Rodriguez was pausing to compose herself or whether she was finished.

MR. ENTINE: I believe she's finished, your Honor.

THE COURT: Okay.

Well, the approximation of the sentence that the Guidelines suggest is useful because the Guidelines take account of the several factors of the statute, in themselves prescribing the considerations and the weight of those considerations in determining what the sentence should be. So the Guidelines already reflect the judgment as a categorical matter and, as a more general matter, by the Sentencing Commission than perhaps inferentially by the Congress as to what is an appropriate range or approximation of a sentence once certain factors are present.

Staying within the rubric and theory of the Guidelines, I do not think that there is ground for the departure motion as has been argued.

However, I think that it's clear that the obligation of the Court is to pay close attention to the Guideline's accommodation of the various factors but not necessarily to yield to it. And I do think that in this

1 case the factors in the statute can be accommodated by a
2 sentence that is somewhat lower than what is recommended by
3 the Guidelines. This is not a Guidelines' departure. For
4 accounting purposes, this is a Section 3553(a) decision.

5 I think where I estimate that the Guidelines have
6 overcounted a little bit is in the -- I think this is not
7 the "heartland" case of a returning drug trafficker. It is
8 that in some sense, but I think the circumstances of this
9 case are far at the low end of the range of possible
10 scenarios that would fit within that. So that is why I
11 principally differ with the Guidelines on this.

12 Nevertheless, it was a serious drug offense. I do
13 not go behind that. I do not question the sentence that was
14 imposed or the deportation that followed.

15 The offense here for which the defendant is being
16 sentenced is the reappearance in the country under that
17 disability. That is fairly unambiguous, and as sad as many
18 of the circumstances are that Mr. Entine pointed out, they
19 may pertain more to the underlying events of history than
20 they do to the present offense.

21 In sum, I think that an appropriate punishment
22 would be punishment of 30 months' incarceration, with credit
23 for the time served.

24 Ms. Rodriguez, if you would stand, please.

25 Upon your conviction of this offense and pursuant

1 to the Sentencing Reform Act of 1984, it is the judgment of
2 the Court that you be, and you hereby are, committed to the
3 custody of the Bureau of Prisons to be imprisoned for a term
4 of 30 months.

5 I will make a recommendation that you be considered
6 for participation in the Bureau of Prison's 500-hour
7 residential drug abuse program, and further recommend that
8 you participate in any mental health treatment or counseling
9 which may be available for you at whatever facility you are
10 designated to be housed in.

11 Upon your release from imprisonment, you shall be
12 placed on supervised release for a term of two years.

13 Within 72 hours of your release from the custody of
14 the Bureau of Prisons, you shall report in person to the
15 district to which you have been released.

16 I will not impose a monetary fine; however, there
17 is a special assessment of \$100 that is due.

18 While you are on supervised release, you shall not
19 commit any other federal, state or local crime. You shall
20 comply with all the standard conditions that pertain to
21 supervised release that are set forth in the United States
22 Sentencing Guidelines at Section 5D1.3(c) and those are
23 incorporated by reference and will be set forth in detail in
24 the judgment.

25 During your supervised release, you shall refrain

1 from the unlawful use of any controlled substance and shall
2 submit to a drug test within 15 days of your release from
3 imprisonment and at least two periodic drug tests thereafter
4 as may be directed by your probation officer, not to exceed
5 a total of 104 tests per year.

6 You shall cooperate in the collection of a DNA
7 sample by the Probation Office.

8 During your supervised release, you are prohibited
9 from possessing a firearm, destructive device, or other
10 dangerous weapon, and you are to participate during your
11 supervised release with any program for substance abuse
12 counseling or treatment as may be directed by the Probation
13 Office.

14 You are to refrain from the consumption of
15 alcoholic beverages during your supervised release.

16 You shall at all times use your true name and are
17 prohibited from the use of any false identifying
18 information, which includes, but is not limited to, any
19 aliases, false dates of birth, false Social Security
20 numbers, or incorrect places of birth.

21 If directed to do so by the Probation Office, you
22 are to participate in GED preparation classes.

23 Finally, if you are ordered deported, you are to
24 leave the United States and not return without the prior
25 permission of the Secretary of the Department of Homeland

1 Security.

2 **THE CLERK:** Ms. Dominga Rodriguez, you have
3 the right to file a Notice of Appeal in this case. If you
4 do wish to file an appeal, you must file it within ten days
5 from the date the judgment is entered. If you cannot afford
6 an attorney to file the appeal on your behalf, you may
7 request the Clerk of the Court to file the appeal for you,
8 and I will do so.

9 Do you understand, ma'am?

10 **THE DEFENDANT (Through Interpreter):** Yes,
11 sir.

12 **THE COURT:** All right. The defendant stands
13 committed. We will be in recess.

14 **THE CLERK:** All rise.

15 Court is in recess.

16 **MR. ENTINE:** Thank you, your Honor.

17 (Proceedings adjourned.)
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C E R T I F I C A T E

I, James P. Gibbons, Official Court Reporter for the United States District Court for the District of Massachusetts, do hereby certify that the foregoing pages are a true and accurate transcription of my shorthand notes taken in the aforementioned matter to the best of my skill and ability.

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